K) 295-56

1949.

File No. AGN Misc/49-II

Legal **DEPARTMENT**

E **BRANCH**

K

Subject.— Miscellaneous Agreements.

P-14

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File No. A.G.N. Misc/49-II

Std. Sectt. Slip 24 B e.

11-E

Misc/Kg.11

DRAFT AGREE... 157

An Agreement made at the day of On thousand nine hundred and forty nine between The Governor of Bombay hereinafter called "the Government" (which expression shall unless the context does not so admit include his successors and assigns) of the one part and [of] Nayakwadi Associated Industries, Ltd., a Company incorporated under the Indian Caompanies Act 1913, and having its registered office at hereinafter called "the Company" (which expression shall unless the context does not so admit include its successors and assigns) of the other part.

Whereas the Company is desirous of starting a Factory for the manufacture of Kath from Khair (Acacia catechu) trees,

And whereas the Company has requested the Govt. to grant it a concession for a period of thirty years for the extraction of Khair trees of girth varying from 24" to 36" overbark at 2 feet from ground level in the forest areas of Bhatkal, Honawar, Kumta, and Ankola Ranges of the Kanara Western Division (North Kanara District), which Govt. has agreed to do upon certain terms and conditions.

And whereas before signing this agreement the Company has deposited with the Divisional Forest Officer, Kanara Western Division (hereinafter called "the Divisional Forest Officer") a sum of Rupees three thousand only (Rs 3000) as security for the due compliance with and the performance by the Company of all the terms and conditions of this agreement so far as they are to be observed and performed by the Company.

And whereas by a rule under section

76, clause (d) of the Indian Forest Act, 1927, herein after called "the said Act" whoever enters into any contract with any Forest Officer acting on behalf of Government shall if so required by such Forest Officer, bind himself by a written instrument to perform such contract. Now it is Hereby Mutually Agreed between the parties hereto as follows:-

1. The Compnay shall have a concession for thirty years from the..... day of .... 194 for the extraction of Khaira trees of girth varying from 24" to 36" over bark at 2feet from ground level in the forest areas of Bhatkal, Honawar, Kumta and Ankola Ranges of the Kanara Western Division (North Kanara District), at a flat rate of royalty of Rs.4-8-0 per tree to be paid to the Government, the rate of royalty being liable to revision immediately after the completion of five years of earlier on account of the Company's failure to comply with the terms of the concession. This concession is granted to the Company for its own manufacturing purposes only.

2.(a) The Company shall forthwith upon felling the trees from the stools thereof and shall keep such stools clear of debris.

(b) The Company shall take such precautions as the Divisional Forest Officer may from time to time direct to protect from fire the area under exploitation and in the event of fire shall take measures to extinguish it and to prevent it from spreading.

c) The marking for exploitation shall be done by the Forest Deptt. and the Co. shall sign the list thus prepared prior to commencing and felling operations.

(d) .....

76, clause (g) of the Indian Forest Act, 1927, herein after called "the said Act" whoever enters into any contract with any Forest Officer acting on behalf of Government shall if so required by such Forest Officer, bind himself by a written instrument to perform such contract. Now it is Hereby Mutually Agreed between the parties hereto as follows:-

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(b) The Company shall take such presautions as the Divisional Forest Officer may from time to time direct to protect from fire the area under exploitation and in the event of fire shall take measures to extinguish it and to prevent it from spreading.

(c) The marking for exploitation shall be done by the Forest Deptt. and the Co. shall sign the list thus prepared prior to commencing and felling operations.

(d) .....

(d)The Company shall be allowed not more than 2000 Khair trees per annum for exploitation during the first three years of the contract from its area in such regular manner as may be decided by the Divisional Forest Officer. As regards breakages of trees other than these to which it is entitled, the Company shall pay for the broken trees at the prevailing rates, as inforce in Kanara forest Khandy. Permit Rules plus rupees two per

3. (a) The Company shall manufacture Kath by machinery only and shall establish the factory for this purpose in the North Kanara District within one year from the date of agreement.

(b) The Company shall select the site for the factory in consultation with the Forest Department.

(c) The Company shall be responsible fo housing, medical attention, clean drinking water, ~~etc.~~ and other amenities for of its employees as recommended by the Labour Department of the Government of Bombay.

4. The Government shall have the right to nominate one Director on the Board of Directors. and the Coy shall suitably * amend its Articles of Association for this purpose

5.(a) The Company ~~shall be given the facilities to purchase~~ Govt shall give to the. to take on lease suitable land for factory site if required. So far such trees as may be reserved to shade or other purposes to be decided by the Forest Department the whole factory area shall be be cleared of tree growth within a month of the date of grant of such land and kept clear of coppice, shoots, lantana, brushwood and other growth during the currency of the lease.

(b) No part of the land shall be sublet
and no part of any building constructed
or any machinery erected on the land shall be
sublet, assigned or ~~sold for use or operation~~ otherwise transferred
in the area of the concession to any person
whatsoever without the previous permission
in writing of the Divisional Forest Officer.

6. The Company's carts or motor vehicles
will be allowed to ply on all Forest roads
free of toll subject to the periodical
closures and other traffic restrictions which
the Divisional Forest Officer may from time
to time prescribe to keep the road free from
damage provided that such restrictions or
closures
elsewhere will affect not only the Company's
vehicle but also all similar vehicles to whom-
soever they belong.

7. The Forest Department will appoint a special
Officer of the grade of Forester for measuring
the Company's logs for issuing transit passes
and assisting and supervising the operations
undertaken by the Company in the Forest. The
pay and allowances of this officer shall be
paid by the Company. The Company shall pay
on demand the amount required to defray the
cost of his pay and allowances of all
descriptions
disciplinary, leave and pension contributions,
fixed by the Conservator of Forests, S.C., who
will have the power to appoint more
than one Special Officers for the purpose if he is of the opinion
it it be found that one officer cannot deal with
the estimated intake instead of raw material . The pay
and allowances of the additional officers will
also be borne and paid by the Company.

8. The amount of royalty, rent or any other
amount due under this agreement shall be paid to
the Dival. Forest Officer on behalf of Govt.
and whenever any part of the royalty or any other amount is due under this

agreement ....

agreement shall be in arrear the same shall be recoverable from the Company in accordance with section 83 of the said Act or as an arrear of Land Revenue in accordance with sections 82 and 85 of the said Act or in both ways. If the said rent or royalty due under this agreement hereby reserved shall be in arrear for the space of 30 days whether the same shall be legally demanded or not if any other amount due under this agreement shall be in arrear for the space of 30 days after it shall have been legally demanded or whenever there shall be a breach of any of the convenants or conditions by the Company which shall not have been rectified within a reasonable time (as to which Government will be the sole judge) or their having been officially brought to the Company's notice, Government will be at liberty either to terminate this agreement and to forfeit the said deposit or to continue the same but at such revised rates of royalty and/or upon such revised terms and conditions as the Government may in it s absolute discretion think proper.

9. The Company shall -

(a) pay the full amount of the royalty of the trees marked for extraction whether trees are used by it or not. Such all such amount shall be paid in three instalments as shown as under -

1/3 of the amount on or before taking over the trees after signing the register of such trees or before 30th Nov. of the year of exploitation whichever is earlier. another 1/3 rd. of the amount on or before 31st Jan. of the following year and the remaining 1/3rd on or before 31st March of .....

of the following year.

(b) removal from the area under exploitation not later than the date fixed by the Divisional Forest Officer all the material to which it is entitled: and shall stamp all timber pieces with its private property mark before they leave the area.

(c) bring all the timber which it is enttitled to remove from the area under exploitation to a depot (the site of which will be fixed and pointed out to it by the D.F.O.) in order that the same may be measured, counted, registered and branded, if so desired by the D.F.O. to be necessary; and shall, if so required by the D.F.O., arrange the tender in the depot for the aforesaid purpose in the manner prescribed by him.

(d) Submit from time to time to the D.F.O. the name, age and address of any person whom it may prepare to employ in superintending its operations in the forests and in the depots fixed for measurement of the tender and shall supply such person with a certificate of appointment which shall be countersigned by the D.F.O., but it shall not employ nor continue to employ persons to whom the D.F.O. may object.

e) when called upon to do so by an authorised Forest Officer, take charge of and keep safely the book called "The Contractor's book" which it shall produce immediately on demand by such Forest Officer and shall return the same to such Forest Officer on the expiry of the operations in the forest each year. Any notice written by the authorised Forest Officer in this book shall be considered as a notice issued in conformity with this agreement.

(f) not to allow any tree to fall on roads and

if .....

if during felling operations any tree falls on a roadside it shall remove such tree immediately so as not to cause any obstruction on the road in any way

(g) take precautions not to damage or obstruct the telegraph wires or posts during the currency of the contrac

Non-compliance of any of the aforesaid conditions of this agreement in respect of each and every particular tree and st ool shall be deemed to be a distinct and separate breach for the purpose of the penalty clause.

10. The Company, its servants and agents shall abstain from the following acts that is to say -

(a) from subletting this contract, or any portion thereof to any person whatsoever without the previous permission in writing of the Government.

(b) from continuing any operations in the concession area after expiry or termination of this agreement.

(c) from felling, lopping injuring or permitting to be felled, lopped or injured by any perso

(i) any reserved tree, that is to say, any tree which has not been specially marked for felling and included in the marking list.

(ii) any free of other forest growth outside the area under exploitation.

(d) from stacking timber or firewood upon the stools of felled trees or upon an coppice, shoot or seedling;

(e) as far as possible from causing or allowing the branches of any felled tree to encumber in any way or to be upon each stools as aforesaid or upon any coppice, steel, or seedling.

(f)

(f) from (i) taking, (ii) removing (iii) claiming or (iv) stacking among, below or near any material belonging to the Company any branches, steels and therns of any sort having a girth of 24" and under in any part, and leaves of trees felled by the Company or any other material specified for the satisfaction of privileges granted to villagers or for any other purpose.,

(g) from removing any timber, fireweed or other things from the said depot without the permission of the D.F.O. unless the conditions as to payment for the time being have been duly fufilled.

(h) from stacking or keeping material at any place within the limits of the Forest other than authorised depots.

(i) from bringing into and from permitting to enter the area under exploitation any cattle except such as may be necy.for the purpose of this contract.

(j) from cutting or removing any tree in contravention of clause 2.

11. The Company agrees to perform the fellowing conditions, that is to say -

(i) it shall defray all expenses which may be incurred in felling, converting and removing the timber and fireweed and other things to which this contract applied, including any compensation payable under the Workman's compensation Act, 1923 (VIII of 1923), to workmen employed by it.

(ii) in the event of the whole or any portion of this contract being sublet with the previous written permission of the ~~Governor of Bombay~~ Divisional Forest Officer on behalf of Govt the Company shall be responsible for the acts

and .....

and emission of the sub contractors and their servants as if they were the servants of the Company.

(m) any tender and fireweed or other things removed from the concession area or from the depot otherwise than in accordance with the conditions hereinbefore contained shall be liable to seisure by any Forest or Police Officer and when so seized, shall be forfeited to Government.

(n) any timber and fireweed or other things remaining in the depot aforesaid or any where within the limits of the forests, after the expiry or termination of this agreement shall be the property of Govt. and may be removed from the said forest by the D.F.O.

clause as accepted by the Minister in the original draft agreement submitted previously

clause as suggested by RD for Sabis approval.

(o) The Coy shall be liable to pay for the amount of all damage which at any time previous to the exp[illegible] or termination of this agreement or such earlier date as the D.F.O may by order in writing fix in this behalf may be caused to any forest produce belonging to Govt within the area under exploitation by illicit cutting, by fire or by cattle grazing if such cutting or fire is traceable to any act or omission of the Coy its servants or agents and if such cattle belong to or have been allowed to graze by the Coy, its servants or agents, failure to pay the said amount of damage as assessed by the D.F.O shall make the Coy liable to pay to Govt. a penalty of an amount upto Rs 5000/- (five thousand only) and the amount of such penalty shall be recoverable from the Coy under Section 85 of the said Act as if it were an arrear of land revenue.

(o) If at any time during the term of this Agreement any damage may be caused to any forest produce belonging to Govt. within the area under exploitation by illicit cutting, by fire or by cattle grazing, if such cutting or fire is due to any act or omission on the part of the Company, its servants or agents, and if such cattle belong to or have been allowed to graze by the Company, its servants or agents, the Co. shall be liable to pay to the Govt. such compensation as may be fixed by the D.F.O. by order in writing and the Co.'s failure to pay the said amount of damage as assessed by the D.F.O. the Company shall be liable to pay to Govt. a penalty of an amount upto Rs.5,000 (five thousand only), and the amount of such penalty shall be recoverable from the Company under section 85 of the said

Act .. ..

Act as if it were an arrear of land revenue.

(V) it shall pay such expenses as the D.F.O. may determine to be necessary for, or to have been incurred in the execution of any work or thing to be done, which by the conditions hereinbefore contained it has bound itself to perform or do and which on requisition made by the D.F.O. it has failed or omitted within the time specified in such requisition to perform or do. Failure to pay the said expenses on demand by the D.F.O. shall make the Company liable to pay to Govt. a penalty of an amount up to Rs. 5,000 (five thousand only) and the amount of such penalty shall be recoverable from the Company under section 85 of the said Act as if it were an arrear of land revenue.

(VI) If, in the opinion of the D.FO. the Co. or any of its servants or agents has or have committed a breach of ~~broken evaded~~ or failed to fulfil any of the conditions herein before centained or infringed any provision of the forest land or rules for the time being in force, it shall be lawful for the said D.F.O. by a notice in writing to be served upon the Co. to ~~retain out~~ appropriate the whole or any part of the Company's deposit (whether it may be in the form of Govt. promissory notes or postal cash certificate or currency notes or cash) or ~~out of~~ any other money of the Company in the possession of any Forest Officer or otherwise recover from the Co. the ~~amount of such portion as is possible of the amount of damage sustained~~ compensation for loss or damage sustained by Govt. by reason of the breach or non-performance by the company of the terms and conditions of this agreement ~~of this agreement~~.

Provided .....

Provided always that nothing in this lause shall affect the liability of the Company; or any or its servants or agents to criminal prosecution for any offence committed by it or them against the forest land or rules for the time being in force.

11. And it is further hereby agreed between the parties that in this agreement -

(1) the term "D.F.O." shall be deemed to mean D.F.O., Kanara Western Division or any Forest Officer autherised by him in writing in this behalf to act in the matter of the clause in which the said term is employed.

(2) the term "Conservator of Forests" shall be deemd to mean the Conservator of Forests for the time being.

12. And it is hereby expressly agreed and declared that in consideration of the concessions hereby granted to it the Company hereby doth bind itself to perform every duty and act expressed in the terms, conditions and covenants hereinbefore contained as to be performed by the Company and doth hereby further convenent with the Government that the Company, its servants and agents will obstain from every act expressed in the terms, conditions and convenents hereinbefore contained and to pay to the Govt. through the D.F.O. on demand made in that behalf by him the sum of one humdred rupees for each such branch and that the said sum of one hundred rupees will in accordance with section 85 of the said Act, be recoverable from the Company as an arrear of land revenue without prejudice to any other remedy which the Govt. may have against the Co.

under .....

under this agreement in respect of the said branch.

13. The Govt. hereby agrees that it shall not without the previous consent of the Company modify or vary any of the terms and conditions ~~or covenants herein in the agreement dated the day of 194~~ contained prejudicially affect the business or other interest of the Co. ~~by putting the said Nayakwadi Associated Industries private limited~~

In witness whereof the Governor of ~~Bombay~~ Bombay hath caused the Conservator of Forests, Southern Circle, Belgaum, to set his hand and affix his official seal hereto on his behalf and the common seal of Nayakwadi Associated Industries Ltd., has been affixed hereto the day and year year first above written.

Signed sealed and Delivered by

———— Esqr.

Conservator of Forests,
Southern Circle, Belgaum

in the presence of

i)

ii)

The common seal of Nayakwadi ~~Associated~~ Industries, Ltd., was affixed hereto pursuant to a resolution of the Board of Directors of the Co. dated the day of 194

in the presence of

i)

ii)

NSK/7.3.

1369 ✓

Legal Department.

The draft Agreement as amended is in order.

RN 30/3

Solicitor to Government.

U.R.to R.D.,No. 3509 ,dated the 31st March 1949.

MRP.
29/3.

Issued
31/3.

Submitted after issue

File in Agn Misc/Leg

DGP
2/4

Sdr

Bn 2/4

Agn Misc

C O N T E N T S.

Legal Department File No. AGN. MISC/49-II

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BAS 22/5
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24.5.56